

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**vs.**

**ALTA CALIFORNIA REGIONAL CENTER, Service Agency**

**OAH No. 2023060902**

**DDS No. CS0006963**

**DECISION**

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 12, 2023, from Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin M. Black, Legal Services Manager for ACRC.

Kelsey Handcock, Attorney, represented claimant, who was not present.

Evidence was received, the record closed, and the matter submitted for decision on October 12, 2023.

## **ISSUE**

Should ACRC be ordered to fund speech and physical therapy services for claimant?

## **FACTUAL FINDINGS**

### **Background and Jurisdictional Matters**

1. Claimant is a three-year-old boy found eligible in May 2022 for ACRC services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.), based on his autism diagnosis. Claimant has substantial disabilities in the areas of self-care, receptive and expressive language, and self-direction. He also has a chromosome 1q21.1 microdeletion syndrome resulting in hypotonia, microcephaly, and dysphasia.

2. Prior to being found eligible for Lanterman Act services, claimant received services from ACRC through the California Early Start Program (Early Start). These services included physical therapy one time per month from ACRC vendor Easter Seals and speech-language therapy two times per week from ACRC vendor American River Speech. The Early Start services terminated on his third birthday in April 2023, as required by law.

3. On March 20 and 27, 2023, claimant had his first Individual Program Plan (IPP) meeting. Claimant's mother, claimant's independent facilitator, and Esperanza Zuniga, ACRC Service Coordinator, were present. Ms. Zuniga testified at hearing that claimant's mother requested ACRC's assistance to explore options for providing claimant access to speech and physical therapy services upon termination of Early Start

services. Claimant's mother shared that on February 28, 2023, she attended claimant's initial Individualized Education Program (IEP) meeting for claimant with the Roseville City School District (District) where claimant would attend school. Based on a Multidisciplinary Evaluation conducted on claimant, the District offered to provide claimant 30 minutes of speech therapy per week in a small group. No physical therapy was offered by the District. Claimant's mother did not agree with the District's Multidisciplinary Evaluation or offer of services. Ms. Zuniga agreed to attend the next IEP meeting scheduled for May 1, 2023, to advocate for additional services.

4. On April 18, 2023, claimant's mother made a formal request for "'Gap Funding' for speech therapy at American River Speech for 1 clinical hour weekly until an adequate replacement for speech therapy is in place" and physical therapy to provide claimant with "functional environmental access in the bathroom (for bathing, toilet use and to access the sink), and for monthly physical therapy sessions through Easter Seals California for continued support with gaining functional environmental access to his community."

5. On April 19, 2023, Ms. Zuniga met with claimant's mother, claimant's independent facilitator, and Ms. Zuniga's supervisor Jessica Markov, ACRC Service Manager. They discussed claimant's request for speech and physical therapy services. Ms. Zuniga informed claimant's mother that she would meet with the ACRC management team to discuss her request.

6. On April 21, 2023, Ms. Zuniga sent claimant's mother an email explaining that after discussing her request for funding with the ACRC management team, her request was denied. Ms. Zuniga informed claimant's mother that she should explore generic resources from insurance and the District for speech and physical therapy services. She also explained that American River and Easter Seals were vendored with

ACRC only to provide speech and physical therapy services through Early Start, and claimant was no longer eligible for Early Start services. Ms. Zuniga informed claimant's mother she could appeal the decision through the Notice of Action (NOA) process.

7. On April 25, 2023, claimant's mother through the independent facilitator requested an NOA. On April 28, 2023, ACRC sent claimant's mother an NOA denying her request to fund speech and physical therapy services for claimant. On June 12, 2023, claimant's mother submitted to the Department of Developmental Services her appeal request appealing ACRC's decision.

8. On July 6, 2023, an informal meeting occurred concerning claimant's request for funding. Claimant's mother, the independent facilitator, Ms. Zuniga, Ms. Black, and Melissa Schuessler, Client Services Manager for ACRC were present. Claimant's mother reported that claimant was receiving one half-hour per week of clinic-based physical therapy services funded by insurance, but she believed he also needs additional community-based that physical therapy insurance would not fund.

She also reported that the District offered claimant one half-hour per week of group speech therapy, with a maximum of two children in the group. Claimant's mother was not requesting additional speech therapy from the District. However, she believed claimant needs at least one additional hour of speech therapy per week. Claimant's mother also shared that claimant's insurance company scheduled a speech assessment for July 14, 2023.

9. On July 11, 2023, ACRC issued an Informal Meeting Decision upholding the denial of funding for speech and physical therapy services. The denial was based in part on the grounds that there was no assessment from any qualified professional stating that claimant required additional speech or physical therapy services, or that

those therapy services had to be provided in the community rather than in a clinic setting. ACRC also found that claimant had not exhausted insurance as a resource for funding additional speech and/or physical therapy services.

## **Multidisciplinary Evaluation**

10. On February 6 and 9, 2023, the District performed a Multidisciplinary Evaluation which included academic, psychoeducational, communication, occupational therapy and physical therapy evaluations.

### **SPEECH AND LANGUAGE EVALUATION**

11. The Preschool Language Scales - Fifth Edition (PLS-5) was used to evaluate claimant's speech and language skills. The test is described as follows:

The PLS-5 is a developmental language assessment designed for children from ages birth through 7:11.

*Auditory Comprehension:* This scale is used to evaluate the scope of a child's comprehension of language. The test items designed for preschool-aged children are used to assess comprehension of basic vocabulary, concepts, early grammar, and sentence structures.

*Expressive Communication:* This scale is used to determine how well a child communicates with others. The test items designed for preschool-aged children are used to assess ability to use concepts that describe objects, express quantity, use specific prepositions, and sentence structure.

*Total Language Score:* This scale is used to evaluate the scope of a child's comprehension of language and ability to communicate with others.

Data is gathered through direct interaction with the evaluator, observation, and/or caregiver report.

12. Claimant's "current language comprehension and expression are within the average range, as compared to same-aged children." The "Articulation Screener from the PLS-5 was used to provide information about [claimant's] articulation skills and rule out the need for further assessment." Claimant's "performance suggested "Performance Typical of Age-Level Peers" (Raw Score = 11; 6 or more indicates appropriate skills in children 2;6-2;11)." Additionally, the evaluator noted that:

Sound substitutions were noted, such as 'w' for 'r' and 'l'; some instances of 't' for 'k'; some substitutions of glottal stops for medial 'k'; these misarticulations are not of primary concern at this time given his young age. [Claimant] was observed to produce a variety of Consonant-Vowel combinations, such as VC, CV, CVC, and CVCV. However, the phonological process of final consonant deletion was present in his imitative and free speech. This occurs when children leave off the ending sound of words and is typically resolved by age 3. Final consonant deletion was observed on 66% of target words, as in "dah" for *dog*, "weh" for *red*, and "wah" for *lamp*, as well as within [claimant's] connected speech such as "bih a hou" for *build a house*.

13. The results of the evaluation for speech and language were that claimant met the eligibility requirements under "Speech and Language Impairment (SLI) due to delayed articulation skills which may interfere with successful participation in the oral and social portions of the curriculum/classroom program without additional, specialized supports." The recommendation was that claimant "may benefit from direct contact with a speech language pathologist," the manner in which to be decided through the IEP process.

14. On March 8, 2023, the District conducted an additional speech and language evaluation to supplement the testing performed in February 2023. The objective of the additional evaluation was "to provide additional data about [claimant's] articulation and phonology skills in consideration of parent input." The Clinical Assessment of Articulation and Phonology 2nd edition (CAAP-2) administered to claimant, is "designed to assess English articulation and phonology in preschool and school-aged children and provides data on their performance as compared to same aged peers. Production of single consonants, selected consonant clusters, and common multisyllabic words are targeted within this assessment tool."

Claimant's performance on the assessment "was within the average range as compared to same-aged children. However, his speech can be difficult to understand due to existing patterns of errors." Claimant "exhibits reduced speech intelligibility due to sound and syllable deletions which impact his ability to communicate effectively." It was recommended that the additional assessment be considered with the Multidisciplinary Evaluation when determining appropriate goals and services to be provided through the IEP process.

15. Through the IEP process in February and March 2023, the District agreed to provide claimant with speech therapy in a small group setting for 30 minutes one

time per week, audiology services 90 minutes per year and three times per month for 20 minutes Hard of Hearing services. Claimant's mother explained at the hearing that claimant began his District-provided weekly speech therapy in May 2023. There has never been more than claimant and one other child present for the speech therapy sessions.

## **PHYSICAL THERAPY EVALUATION**

16. Claimant's physical therapy evaluation took place on February 9, 2023, at a District elementary school. Claimant was assessed "utilizing therapeutic handling, observations of functional mobility, observations of gross motor skills utilizing the Peabody Developmental Motor Scales." An occupational therapist was present for the assessment. Claimant's functional range of motion, strength, balance, mobility, and gross motor skills were assessed. The assessment results are as follows:

Overall, [claimant] demonstrated a gross motor quotient score of 96 which falls in the 39th percentile and the average range for his age (average is 90-110).

In the *stationary* subtest, [claimant] was able to maintain a tall kneeling position, stand on one foot for 1-2 seconds, and reached up onto tiptoes for 1-2 seconds.

In the *locomotion* subtest, [claimant] was able to walk backwards and sideways short distances. [Claimant] was able to jump forwards 12 inches and jumped off of a low step leading with one foot. He was able to ascend the stairs without use of the rail and descend the stairs with use of the rail. In the *locomotion* subtest, [claimant] was able to



throw a ball with an overhand and underhand pattern. He was able to kick a ball forwards. When attempting to catch a ball, he would bring his hands out in front of him, but was unable to trap it against his trunk.

17. It was noted that claimant "is demonstrating decreased balance and gross motor skills which is leading to difficulty accessing his playground/recess equipment and campus." As a result, it was recommended that "when he attends a classroom setting with peers present, he should be reassessed to determine need."

18. Initially, through the IEP process claimant was not offered any physical therapy services. Claimant's mother explained at hearing that the District has agreed to provide 120 minutes of physical therapy consultation to be completed by February 2024.

### **Additional Speech and Physical Therapy Evaluations**

19. Claimant submitted several speech and physical therapy evaluations performed in the last year. These include speech assessments by American River Speech (American River) and Mercy Outpatient Rehabilitation Services (Mercy) and physical therapy assessments from Easter Seals and Burger Physical Therapy (Burger).

### **SPEECH THERAPY ASSESSMENTS**

20. On March 3, 2023, American River issued an "Early Intervention Speech and Language Progress Summary" after conducting a reevaluation of claimant's speech and language therapy needs. At that time, claimant had been "receiving early start services for speech and language therapy in this clinic since September 2021."

The purpose of the March 2023 reevaluation was to determine claimant's needs until his third birthday when he would no longer be eligible for Early Start services.

The Rossetti Infant Toddler Language Scale was used to evaluate claimant's "level of preverbal and verbal communication as compared to typical children." The results of the assessment showed that claimant "made excellent progress in all areas, especially in the areas of play, language comprehension, and language expression. He would continue to benefit from speech and language services to target language comprehension and articulation and maintain skills in language expression."

It was recommended that claimant receive speech therapy one time per week for a "45-minute session to work on language comprehension and articulation and maintain current language expression skills leading up to his third birthday." There was no recommendation regarding speech services after his third birthday.

21. On July 14, 2023, Gwendolyn Campbell with Mercy conducted a "Speech Therapy Initial Evaluation" of claimant. Assessments used included "direct interaction," the "Goldman Fristoe Test of Articulation" and "Portions of Preschool Language Scale-5." Ms. Campbell noted that the "most significant concern" was in "articulation/phonology." The assessment findings including the following:

[Claimant] presents with articulation skills in the 81st percentile on the Goldman Fristoe Test of Articulation. Test age equivalent was WNL [within normal limits] on this articulation assessment. However, based on recent testing and direct observation, [claimant's] decreased speech intelligibility is impacted by phonological processes. The Preschool Language Scale-5 was initiated but not

completed due to report of this assessment being previously administered. [Claimant] appeared familiar with a portion of the test administered and mother confirmed the previous speech therapist administered this assessment. Given the presence of phonological processes and reported challenges with social pragmatics, remediation for speech and language skills would be beneficial to help [claimant] reach his full communicative potential.

Ms. Campbell recommended three speech therapy sessions to “address phonological processes and speech intelligibility.” These sessions are covered by claimant’s health insurance.

## **PHYSICAL THERAPY ASSESSMENTS**

22. On December 1, 2022, Easter Seals Pediatric Services prepared an “Early Intervention 32 Month Report.” The purpose of the reevaluation was to determine claimant’s developmental level and whether Early Start services should continue to be provided to claimant through the age of three. Claimant received physical therapy services through Easter Seals since August 2020.

Easter Seals recommended claimant “continue to receive monthly early intervention physical therapy services” until he was three years old. It was also recommended that since claimant would no longer be eligible for Early Start services, he be “evaluated by the school district to determine eligibility of school-based physical therapy services.”

23. In May 2021, claimant also began receiving physical therapy services at Burger. On September 22, 2023, Heidi Langan, a Physical Therapist at Burger,

completed a Physical Therapy Re-Evaluation of claimant. She noted that claimant was making progress towards his goals. She explained as follows:

[Claimant] is making progress in his goals and met 2 of his goals this assessment. He is now able to go up on his tip toes with support 10 times and broad jump at least 18 inches. He is also showing progress with the stairs as he is now able to intermittently ascend with a reciprocal stepping pattern but needs close supervision as he is not safe or stable when doing so. He has made changes in all areas but still needs close supervision as he is unsafe, unpredictable and a fall risk due to his weak core and poor body awareness. He continues to need verbal cuing to slow down as his body goes faster than it can keep up often times. His core strength is improving but he still needs assistance to stabilize his body. 2 new goals were added for a more age appropriate broad jumping distance and to be able to pedal and steer a tricycle independently (3 year old skill).

Ms. Langan recommend claimant continue participating in physical therapy 30 minutes, one time per week for six months, to "improve his overall strength, dynamic balance, safety and reduce his fall risk."

24. Ms. Langan wrote a letter dated October 6, 2023, in which she stated that claimant would benefit from "physical therapy out in the community." Ms. Langan explained that she provides claimant with physical therapy in a "clinic based environment" which is "controlled." She tries to introduce "various pieces of equipment but it is not the same as a community based environment." She further

explained that claimant is “still very unpredictable and unsteady with movement and high risk of falling, especially out in the community instead of in a controlled and safe place like our clinic here at Burger,” so he would benefit from community-based physical therapy.

## **Claimant’s Additional Evidence**

25. Claimant’s mother testified at hearing. She is requesting that ACRC fund community-based physical therapy. She contends that the weekly physical therapy claimant receives is not sufficient, because there is no community-based portion. Claimant received once monthly community-based physical therapy through Easter Seals. He was exposed to parks and walking trails. He learned how to walk trails and go down slides while maintaining his trunk support. Burger cannot provide community-based physical therapy. Claimant’s insurance will not pay for community-based physical therapy because it is considered a duplication of services.

Claimant’s mother is concerned that she does not have the skills or training to assist claimant in the community because she is not a physical therapist. Claimant has hypermobility issues, and she is concerned she will injure claimant if she does not correctly handle him when they are outside the home. Claimant often falls. He has a grey tooth due to a fall. He also recently fell off a trampoline because he does not have awareness of his body.

Claimant’s mother explained that initially the District did not offer any physical therapy services. She was able to obtain 120 minutes of physical therapy consultation related to toileting. Claimant will also always have someone with him when he is on playground equipment.

26. Claimant's mother also does not believe the weekly speech therapy he receives from the District is sufficient to meet claimant's needs. After claimant no longer qualified for speech therapy at American River, claimant's mother saw a decline in the effort claimant used to communicate. Additionally, claimant has medical issues that causes choking. Claimant's mother is concerned that claimant will regress if he is pushed too hard during speech therapy sessions. Claimant's mother believes claimant needs one hour per week of individual speech therapy to deal with social pragmatic issues and articulation.

### **ACRC's Position**

27. Ms. Zuniga and Ms. Schuessler testified about ACRC's decision to deny claimant's request to fund speech and physical therapy services. Ms. Zuniga explained the request for funding was denied in part because there was no assessed need for the additional services request.

28. Ms. Schuessler explained that claimant was assessed for speech therapy services through the District. The assessed need is 30 minutes per week, which he is receiving. Burger conducted a physical therapy evaluation in September 2023, which assessed claimant's physical therapy need as 30 minutes one time per week, which he is receiving. The October 6, 2023 letter Ms. Langan wrote stating that claimant would benefit from community-based physical therapy is not an assessment. Ms. Schuessler explained that without an assessed need, ACRC cannot fund additional speech and physical therapy services.

### **Analysis**

29. When all the evidence is considered, claimant did not demonstrate that ACRC is required to fund speech and physical therapy services. There is no assessed

need for additional speech or physical therapy. The District completed a comprehensive Multidisciplinary Evaluation and additional speech and language testing of claimant in February and March 2023. The result was a determination that claimant's speech and language needs would be met through speech therapy in a small group setting for 30 minutes one time per week, audiology services 90 minutes per year and Hard of Hearing services three times per month for 20 minutes. Additionally, Mercy conducted a speech evaluation which assessed claimant's need for three speech therapy sessions to address claimant's phonological processes and speech intelligibility. No additional speech therapy services were assessed as a need.

30. The District also assessed claimant's physical therapy needs and found that no services were needed. Claimant receives weekly physical therapy at Burger. The assessed need is 30 minutes one time per week, which he receives. While Ms. Langan believes community-based physical therapy would be "beneficial" for claimant, she does not explain what the benefit would be or why claimant cannot obtain the same benefit through his current weekly physical therapy sessions, or in his community and home with his parents' support.

31. Claimant's mother clearly wants the best for her son. She believes additional speech and physical therapy services will provide him with more support. However, there must be an assessed need for those services. There is no assessed need for the additional services she is requesting. Consequently, ACRC's denial of funding must be upheld.

## LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, section 4500 et seq.) Under the Lanterman Act, regional centers fund services and supports for persons with developmental disabilities.

2. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code sections 4700–4716.) Claimant’s mother requested a fair hearing to appeal ACRC’s denial of her request to fund speech therapy and physical therapy. The burden is on claimant to establish that ACRC is obligated to fund the treatment, which is a new benefit. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

3. Welfare and Institutions Code section 4512, subdivision (b), defines “services and supports for persons with developmental disabilities,” in relevant part, as follows:

[...] specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or,



when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. [...]

4. Welfare and Institutions Code section 4646, subdivision (a), provides:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, if appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. Welfare and Institutions Code section 4646.5, subdivision (a)(1), provides in relevant part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, the consumer's parents and other family members, the consumer's friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

6. Claimant has not met his burden of proving that ACRC should fund speech and physical therapy services. There is no assessed need for speech and physical therapy services in addition to the services claimant is currently receiving through the District, Mercy, and Burger. As a result, the request for funding from ACRC for additional speech and physical therapy services must be denied.

## **ORDER**

Claimant's appeal is DENIED. Alta California Regional Center's denial of funding for speech and physical therapy services under the Lanterman Act is SUSTAINED.

DATE: October 23, 2023

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.